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Delivery and Public Accountability

Reframing Regulation: 'Privatisation', De-democratisation and the End of Social Protection?

La Réglementation réformée : « privatisation », déficit démocratique et fin de la protection sociale ?

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Reframing Regulation: 'Privatisation', De-democratisation and the End of Social Protection?

La Réglementation réformée : « privatisation », déficit démocratique et fin de la protection sociale ?

Steve Tombs

Introduction

- 1 Since 2010, what had previously been New Labour's approach to business regulation – 'better regulation' (who could possibly object?) – has become turbo-charged under conditions of 'austerity', an umbrella term commonly used to capture reductions in public spending in the UK, legitimised ostensibly as a fiscal and economic response to the financial crisis of 2008/09, but which cohered with Conservative party political commitments to shrinking the welfare state and public services. 'Better regulation' has in effect meant 'less regulation': it is a formal policy shift from enforcement to advice, a concentration of formal enforcement resources away from the majority of businesses onto so-called high risk areas, and consistent efforts to do more with less.
- 2 In the context of the onslaught on public services and their regulation, fire protection has been particularly vulnerable: in December 2018, HM Inspectorate of Constabulary, Fire and Rescue Services reported that fire safety inspections across England had fallen by 42% since 2010/11 – a reduction worth bearing in mind in light of the fire at Grenfell Tower in June 2017 which killed 72 people and devastated the lives of many more.¹ Perhaps most alarmingly, a National Audit Office report noted that the government had "reduced funding most to fire and rescue authorities with the highest levels of need....as defined by the social and demographic factors."² In other words, the cuts to fire and rescue services have fallen hardest on the poorest – just like all austerity cuts³.

- 3 But this is not simply a sorry tale of anti-regulatory zeal, of austerity and cuts, of the non-enforcement of regulation, nor simply of the broader undermining of social protection. Rather, this is about a process of the long march of profit-seeking institutions through what was public service and public provision – a process characterised by privatisation, marketisation, de-democratisation and de-regulation for the business world. Thus, the austerity policies implemented from 2010 onwards are not simply to be understood as economic necessities nor as opportunities to advance Conservative social and labour market policies, but are to be understood within this wider framework of the neoliberal transformation of services of public interest.
- 4 In what follows I focus upon the central role that regulatory institutions play in public provision in the form of social protection – protection, that is, for communities, workers and the environment from the destructive effects of economic activity, ostensibly achieved through regulation and its enforcement. These are relatively ignored areas of academic scrutiny – a research myopia that has only been accelerated by the march of neo-liberalism through our institutions, not least academia.⁴
- 5 The focus here is upon the effects of both 'better regulation' and austerity as political initiatives, each fuelled by and furthering neo-liberalism and their effects upon the capacities of regulators to undertake that with which they are formally charged – enforcement of law with respect to business. Alongside this, and again in the contexts of both better regulation and austerity, the article examines how private organisations are increasingly encroaching upon the public provision of social protection – through infecting the ethos, intervening in the practices and formally usurping some of the roles of public regulators. It is argued that these are processes of de-democratisation.
- 6 I do so in particular through a focus upon dynamics at local state level, drawing upon qualitative data gleaned from those at the front-line of local regulatory enforcement – Environmental Health Officers – a group who have been virtually entirely absent from social scientific research in general, and not least that focussed on 'policing', regulatory enforcement and public service provision. My geographical focus here is on Merseyside, a sprawling but relatively poor conurbation in the North-West of England.
- 7 Finally, some of the effects of these processes are examined through a focus upon the fire at Grenfell Tower, which killed 72 residents in a relatively poor West London housing estate in June 2017. The links between the less visible decline of social protection documented in this article, their de-democratising effects, and how Grenfell was politically and socially produced are considered.

Making 'Better Regulation'

- 8 In 2004, New Labour's Chancellor of the Exchequer Gordon Brown established the Hampton Review, with a remit to reduce regulatory "*burdens on business*" across all (63) major, national regulators, as well as 468 local authorities.⁵ It was to be a key moment in Labour shedding its image as an anti-business, pro-regulation party, instead embracing business-sympathetic, pro-entrepreneurial, anti 'red-tape' policies which benefit New Labour in government.⁶
- 9 Hampton's subsequent 2005 report – *Reducing Administrative Burdens: Effective Inspection and Enforcement* – proved to be the consolidation of 'Better Regulation'. Combining ideological attacks on regulation *per se*, undermining the role and capacity of

regulators, and engaging in pro-business legal reform⁷, it produced significant reductions in all forms of enforcement activity across a swathe of national and local forms of regulation.

- 10 By the General Election of 2010, much in the regulatory landscape across Britain had been transformed. Moreover, in the years immediately preceding the Election, the financial crisis had erupted, resulting in massive bailouts of banks by the state and a tide of criticism of the level of regulation of the financial sector. Yet, quite remarkably, the political consensus, at least in Britain, remained that business was over-regulated – and all three mainstream political parties campaigned on manifestos to further reduce regulation. The five years of Coalition Government which followed went on to act on that commitment with a feverish intensity. Nor did the post-2015 Conservative government relent on its attack on regulation and enforcement – its anti-regulation practice, if not rhetoric, barely changed in the wake of Grenfell.
- 11 At national and local levels, then, across a swathe of areas of business regulation, on virtually every indicator – be this inspections, all forms of enforcement action or prosecutions – one finds significant and consistent downturns in regulatory activity. These trends were clearly evident from 2004 onwards,⁸ and then again as marked, if not exacerbated, in the post austerity period from 2009/10.⁹ What we see in these trends in enforcement data – across environmental protection, fire protection, food standards, health and safety, minimum wage, pollution control and trading standards – is staggering in that they all follow the same trajectory and, this article argues, are all effects of the same processes, that is, the effects of the 'better regulation' agenda which began under New Labour, which was pursued further under the Coalition from 2010 onwards, albeit latterly overlain by the effects of austerity.

Austerity, 'Cuts' and Local Regulation

Effect of austerity on local authorities

- 12 From 2009/2010, local government funding from Westminster came under pressure. Indeed, it soon became apparent via analyses of the distribution and impacts of these cuts that they impacted most heavily upon poorer Local Authorities:

Councils covering the 10 most deprived areas of England – measured according to the index of multiple deprivation – are losing £782 on average per household, while authorities covering the richest areas are losing just £48 on average. Hart district council in Hampshire, the least deprived local authority, is losing £28 per household, while in Liverpool District B, the most deprived area, the figure is £807.¹⁰

- 13 One of the most deprived regions in the UK is Merseyside – and this section draws upon a case study of regulation and enforcement in the local authorities which make up this region. Merseyside is a populous conurbation: the combined population of the five local authorities¹¹ under examination here is 1.4 million. There are some 40,000 businesses registered across these authorities. Merseyside is also one of the poorest regions in England, if not the poorest. On the Index of Multiple Deprivation (2015), Knowlsey is the second poorest local authority area in England, Liverpool the fourth poorest. Residents across all five local authorities are particularly reliant upon the local state for a range of welfare, social and public services, as well as employment opportunities, so

that changes in any of these impact disproportionately upon local people, as residents, consumers, and workers.¹²

- 14 The focus in the case study is on three functions of Local Authority Environmental Health Officers (EHOs) who, through their respective specialisms, enforced law relating to food safety, which is enforced entirely at local level, and occupational health and safety and pollution control, each of which involves a division of enforcement responsibilities between local authorities and national agencies (The Health and Safety Executive and the Environment Agency, respectively).
- 15 In a series of interviews with 35 EHOs across Merseyside,¹³ during 2014-15, the strongest, most consistent theme to emerge focused on 'the cuts': these had clearly begun to bite, in ways that threatened workers, consumers and communities. Typical indications were thus: *"at present, we can't meet our statutory duties"; "to be honest we're now doing statutory stuff only"; "there's nothing left to cut now"; "there is no padding left, we're below the statutory minimum ... there are no areas of discretion left"; "where we are now, we're at the point where worker safety is being jeopardized"; "it's going to come to the point where it's going to affect the residents, the local population; in many ways we are at that point now, public health and protection is being eroded";* and, most tellingly perhaps, *"we're at the point where there is no flesh left, this is starting to get dangerous, a danger to public health"*. There are various dimensions to these cuts and their relationship to wider pressures on local authority enforcement against the private sector – which are worth greater exploration in the context of this paper.

Staffing

- 16 Most starkly, staffing levels across each of these three functions across all of the local authorities had, virtually across the board, been radically reduced. It is worth noting the absolutely low numbers of staff is at issue here, in any authority in any year, but notably by the final year for which data is provided, that is, 2017. At its most extreme, by April 2017, Knowsley had no dedicated pollution control EHOs, and neither Liverpool nor Sefton had any dedicated health and safety EHOs. It is little wonder, then, that during interviews EHOs expressed remarkably similar views, to the effect that local authority enforcement capacities had been so undermined that public health and safety was endangered. In terms of EHO staffing in the five Local Authorities, there emerged, as indicated, a remarkably consistent picture. In every Local Authority, EHO numbers had fallen significantly between April 2010 and April 2015. Overall, total numbers across the three functions fell by over 52% – from 90.65 Full-Time Equivalents [FTEs] to 47.78 FTEs. The declines were across all functions and Authorities, with health and safety EHO numbers falling most starkly; indeed, in two authorities, Liverpool and Sefton, by 2015 there were no dedicated health and safety inspectors – food EHOs said they would *"keep an eye out"* for health and safety issues. At the same date, there were no pollution control EHOs in Knowsley.

Increased Obstacles to Enforcement

- 17 With fewer staff, it is hardly surprising that many interviewees raised the issues of a long-term decline in the number and duration of inspections, a long-term decline in the use of formal enforcement tools, and a decreasing use of prosecution. On the latter,

another clear message from the data was of increasing obstacles to the ability to prosecute. The latter included: a lack of staff time; fear of losing cases, and 'wasting' precious resources on them; lack of support from Legal Services departments to prosecute; and an increased political risk ("*flak*") in prosecuting. Moreover, these types of responses are indicative of a political context for regulatory enforcement where the very idea of regulation is under attack, and are a useful illustration of how discourses and policies at national level can translate into barriers to enforcement at local levels. What appear to be quite mundane, technical changes – in budgets, staffing, activities – are at the same time part of a wider political project. If 'better regulation' meant achieving deregulation, then austerity increased the opportunities for so doing significantly.

A Loss of Expertise

- 18 Reductions in staff also meant the loss of a particular kind of resource, that is, expertise and experience: redundancies did not only mean that staff were not replaced but this also entailed a loss of specialist expertise, alongside pressures for regulators to become generalists. As one respondent put it, "*it's the experienced staff who have gone, so we have lost numbers and expertise*". In fact, the shift from regulators being specialists to generalists was one consistent theme across the interviews, referred to by numerous respondents and in every authority: "*People have had to become generalists*"; "*most of them are just thankful they've still got a job*".
- 19 Of course, such dynamics of broader ranges of competence being expected from staff in the contexts of organizational pressures (external and internal) is not confined to this context – indeed, it would be familiar to the readers of this journal who work in education or academia, where teachers are increasingly expected to be generalists across subjects, actively researching and generating income, engaged in impactful work and public engagements, and undertaking a range of administrative tasks, whilst performing pastoral and an increasing range of non-teaching but student facing roles.

A Lack of Training

- 20 Moreover, the loss of staff combined with a shift from a specialist to generalist inspection focus had made re-training necessary. However, another clear theme to emerge from the interviews was of declining opportunities for training at the time when it was most needed. As one Regulatory Services manager put it, "*We have a training budget, but it is now business hardened*" – by which he meant that there was "*little access*" to training, "*except to free online courses*". An EHO translated this into the effects on an individual: "*I used to go on 6 to 10 courses a year, now perhaps one or two, I'm supposed to do 10 hours of CPD [Continuous Professional Development] a year but am struggling to manage that*".

The Reach of the Private Sector into Public Service

- 21 Alongside the resource constraints within which Local Authorities are struggling to meet their statutory duties as regulators is a related development – the creeping influence of the private sector in those regulatory efforts. Here we find clear instances

of austerity as a key vehicle for further neo-liberalism – and, in their combination, austerity and neo-liberalism are changing the role of local regulation and enforcement, perhaps irrevocably. This not only undermines the idea that regulation is something which is aimed at controlling business, but it also creates an increasing democratic deficit, as public services designed for social protection come under ever increasing private influence.

Educating EHOs

- 22 We can see the creeping influence of the private sector in changes to the education of EHOs. Such education is crucial not simply for its formal substance but for the ethos and priorities of the profession which are shaped through it.
- 23 EHOs attain professional status through a University degree course accredited by the Chartered Institute of Environmental Health (CIEH). In 2011, the curriculum was overhauled, partly, in the words of one interviewee, a programme leader of one such course at a North West University, to reflect *“the shift in the profession from not being seen as inspection focused”*. In the words of another respondent, a student EHO, *“CIEH is increasingly making the content of degrees more private-sector friendly”*. This process had already begun as a result of Local Authorities' inability to offer paid placements for students, while students require placements in order to complete the main assessment on their degree course. Several respondents said that local authority-funded students simply no longer exist – the one student EHO of the panel was working in the authority part-time, unpaid. More commonly, since students still have to undertake a placement, they now take these where they can be paid, or at least receive expenses, that is, in the private sector – Asda, Sainsbury's, Tesco's were all mentioned as significant sites for such placements in the food sector. This also means that the values and perspectives of the private sector (the regulated) are prioritised for the student EHO over those of the regulator. In such subtle ways are the mind-sets and thus practices of a profession shifted.

Forms of Privatisation

- 24 When respondents were asked where they thought their service might be in five to ten years, responses were a variation on a theme, encapsulated pithily by the response, *“I don't know if I'll be here in one year let alone five years”*. Those who expanded upon this rather dis-spirited response indicated that the function would become increasingly subject to market forces and logics, with reforms taken towards partial (through outsourcing) or full privatisation, the latter being the wholesale ownership of functions by private companies. Such observations were couched in the context of more general prognoses of how local authorities would respond to the pressures of funding cuts¹⁴.
- 25 Such indications are hardly pure speculation. The wholesale outsourcing of regulatory functions – contracting these out to private contractors in a prefiguration of wider privatisation – has been realised in two local authorities. In October 2012, North Tyneside Council announced the transfer of 800 employees to Balfour Beatty and Capita Symonds. Then, in a much bigger contract, in August 2013, the London Borough of Barnet saw off a legal challenge to a contract to hand over its services to two wings of Capita, under what has become known as the 'One Barnet' model. Business services –

estates, finance, payroll, human resources, IT, procurement, revenues and benefits administration, and customer and support services – have been outsourced to Capita in a ten-year contract worth £350m. A range of other services – including regulatory services – were contracted to its subsidiary Capita Symonds, in a £130m contract, also for ten years. From January 2016, Burnley Council's environmental health services were outsourced to Liberata.

- 26 These wholesale shifts from public to private provision are the mere visible tip of a significant iceberg. Councils in Bromley, Chester West, Cheshire, and Wandsworth have all publicly considered wholesale privatisation of regulatory services. Moreover, recent research by the New Economics Foundation for the Trade Union Congress calculated that, "*Environmental and regulatory services is the sector with the second biggest proportion of expenditure paid to external contractors, at 44 per cent*",¹⁵ second only to social care. The arrangements under which this outsourcing proceeds are complex and opaque, confounding accountability and often even transparency under clauses of 'commercial confidentiality', and include diverse arrangements such as the use of Strategic Service Partnerships (SSPs), Joint Venture Companies (JVCs), shared services, and collaborative outsourcing.¹⁶

The Primary Authority scheme

- 27 The transformation of social protection within the broader context of the neo-liberal transformation of welfare states is not simply about non-enforcement – it also involves a concerted effort to change the relationship between the state, the private sector and regulation. Indeed, this changing relationship is increasingly one in which the private business, ostensibly the object of regulation, becomes a key vehicle in that regulation. A paradigmatic instance of this is being achieved through the Primary Authority scheme, itself illustrative of how the economics and politics of Better Regulation have combined to produce a fundamental shift in the practice and principles of regulation and enforcement. The Primary Authority (PA) scheme was introduced by the Labour Government in 2009, but given considerable impetus by the Coalition Government from 2010, notably following the establishment of the Better Regulation Delivery Office (BRDO) in 2012, for which oversight of the scheme was a key priority.
- 28 According to the BRDO, the scheme;
- allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or addressing non-compliance. The general aim is to ensure that local regulation is consistent at a national level, but sufficiently flexible to address local circumstances. The business can decide what level of support it requires, and the resourcing of partnerships is a matter for the parties concerned. A primary authority can recover its costs.*¹⁷
- 29 When this statement was issued, in April 2014, 1500 businesses had established PA relationships across 120 local authorities. The PA scheme has mushroomed in recent years. By 27 March, 2017 there were 17,358 such relationships across 182 authorities. In a prelude to *The Enterprise Act 2017*, the Government stated that "*The number of businesses in Primary Authority is expected to increase from 17,000 to an estimated 250,000 by 2020 and simplification of the administrative arrangements for the scheme is required to support this expansion*".¹⁸ PA schemes apply across a vast swathe of areas of regulation, but their main areas are pollution control, occupational health and safety and other local

environmental health enforcement areas, such as food safety, trading standards, fire safety, licensing, petrol storage certification and explosives licensing. It allows a company – and, since April 2014, franchises and businesses in trade associations – operating across more than one local authority area to enter an agreement with one specific local authority to regulate all of its sites, nationally. So, a supermarket brand like Tesco's may have stores in every one of the local authorities in England and Wales and, under the PA scheme, it can reach an agreement with one local authority to regulate its systems across all of its stores in every local authority for complying with a relevant body of law – occupational health and safety or food hygiene, for example. This guarantees a homogeneity of regulatory treatment – often, a homogeneity of regulatory acceptance and tolerance – across geographical areas.

30 To regulate its systems, the company makes a payment to the local authority, agreed through contract. It should be immediately clear that this structure through which contracts are agreed enormously favours the businesses – these are few as opposed to the many local authorities who want the contract and the associated economic benefit from the business, so that such highly unequal terms of trade should be thought of as a distorted market of few sellers and many buyers.

31 Aside from the power to impose more rather than less favourable contractual conditions, the key benefit of the Primary Authority agreement *per se* for the company is the absence of effective oversight in the vast majority of its sites. These can be visited in other areas, but any enforcement action needs to be undertaken through the local authority which is the PA. Should a local authority wish to prosecute a company in a PA agreement, for example, it can only do so with the permission of the local authority which is party to that agreement. Then, under the scheme, any consideration of a potential prosecution must entail prior notice being given to the company; the company can then request that the matter be referred to the Better Regulation Delivery Office (BRDO) for determination.¹⁹

32 The Government's directives to local authorities leave no doubt that the scheme is a way for enforcement action against business to be reduced:

Primary authorities generally report low levels of enforcement action against the businesses they partner with. In the event that an enforcement officer decides to take action against a business that is in a direct partnership with you, or covered by a co-ordinated partnership with you, he or she is required to notify you via the Primary Authority Register. As a primary authority you can direct against (block) an enforcement action being taken against the business when you have issued relevant Primary Authority Advice and the business was following it.²⁰

33 While civil servants at the Better Regulation Delivery Office (BRDO) stated²¹ that the PA scheme is “a big success”, it is proving highly problematic for local regulators, even as they sought to enter into PA agreements in order to generate income – “this is why we are really pushing the PA scheme”, one local authority interviewee told me. But as another respondent put it, while “in theory it could work well, in practice it protects large companies from local authority enforcement”. Others noted similar problems with the scheme, for example: “under PA they [companies] only have to demonstrate the existence of systems”, referring to paper-based plans and methods rather than actual practices; Local Authorities have a “disincentive to take enforcement action because PA schemes are a source of income”; PA schemes “protect companies from inspection and enforcement”; they operate “in my experience at the level of a tick-box [exercise] rather than real co-operation or taking

responsibility"; PA schemes *"work on paper only, there are hundreds of businesses in the scheme and I can't see how these can all be genuine"*.

- 34 In general, then, as one enforcement officer noted, *"Primary Authority has had a real impact on what we can and cannot do"*; the claim was made at length that businesses *"pick and choose"* which local authorities to enter into PA agreements with, with the insistence that they will pick the *"no-one knows anything authority"*, that is, local authorities with no experience of the particular industry or business. Moreover, in the processes of negotiation to draw up the contract which represents the PA agreement, local authorities are at a distinct disadvantage – there is an asymmetry of expertise²² between local authority negotiators and private companies in such contractual negotiations, as well, of course, as a structural power accruing to private companies operating across numerous authorities to drive down the terms of contract with any one local authority.
- 35 The Primary Authority scheme, then, represents a fundamental shift in the nature of local regulation and enforcement. It is a classic vehicle of 'Better Regulation', since it reduces inspection, builds in checks *against* regulation and enforcement, exacerbates the power imbalance between regulators and regulated, and operates on a marketised, contract-based system. It is crucially indicated in the demise of social protection – a demise gruesomely illustrated by the fire at Grenfell Tower which came at the end of the period of research discussed in this paper, and which horrifically illustrated many of the themes generated through that research.

The Grenfell tragedy: from lack of regulation to loss of lives

Grenfell and the Shield of Primary Authority

- 36 Understandably, the fire at Grenfell generated a torrent of media, public and political attention. But within this torrent of 24-hour, 7-days-a-week, 52-weeks-a-year comment, the role of Whirlpool and certainly of its Primary Authority, Peterborough City Council Trading Standards, received what ranged from little to no scrutiny.
- 37 Within days of the fire, with the national and local state still absent from the scene, as controversy around the numbers of lives lost raged, and as mounting evidence of the public and private cost-cutting involved in the fatal refurbishment of the Tower spewed into the public domain, the Metropolitan police (the Met) stated that they suspected the immediate cause of the fire to be a Hotpoint fridge freezer. As part of their press release in response to this, the manufacturers of the Hotpoint brand, Whirlpool, stated that,
- We are working with the authorities to obtain access to the appliance so that we can assist with the ongoing investigations. Under these circumstances, we are unable to speculate on further details at this time. We are addressing this as a matter of utmost urgency and assisting the authorities in any way we can. We will provide additional updates as our investigations progress. The government said that consumers do not need to switch off their fridge freezer pending further investigation.²³
- 38 It is of interest that neither that brand name nor the manufacturer have featured very much at all in the mass of coverage around the fire and its aftermath.

- 39 It is also worth noting that the consumers' organisation *Which?* and the Chartered Institute for Trading Standards (CTSI) had been campaigning for several years for a ban on plastic-backed electrical goods. Whirlpool and other manufacturers had opposed this. In this opposition, Whirlpool had been consistently supported by Peterborough Trading Standards – on which more, below.
- 40 When the Phase 1 report from the Public Inquiry was published, some 28 months after it occurred, Sir Martin Moore-Bick, the Chairman of the Grenfell Tower Inquiry, concluded that, "*Although some questions remain unanswered, the evidence, viewed as a whole, leaves me in no doubt that the fire originated in the large fridge-freezer*".²⁴ Wherever the truth lies – and on balance it seems that the fridge freezer was the trigger for the atrocity – there is a backstory to the fridge freezer and Whirlpool: one of corporate power, regulatory failure and the victimisation of consumers.
- 41 In August 2016 – ten months before the Grenfell Tower fire – that latter fire was chillingly foretold in a relatively unreported event. In a tower block in Shepherds Bush Green, West London, just over a mile from Grenfell, a fire caused the 18-story tower block to be evacuated. No-one was injured but images of the tower block burning closely resemble those of Grenfell.²⁵ Moreover, the cause of the fire was found to be a faulty tumble drier, the Hotpoint brand made by Whirlpool. In fact, having acquired Indesit (and thus all of its brands, including Hotpoint) in 2014, Whirlpool began a series of appliance testing which identified faults in three brands of tumble driers, namely Hotpoint, Indesit and Creda, whereby a build-up of fluff could lead to fires²⁶. Parliamentary hearings later revealed that the problems with some Whirlpool driers had first come to light in 2005, and the Chartered Trading Standards Institute believed they should have been recalled by 2006²⁷. In November 2015, Whirlpool estimated about 3.8m tumble dryers were affected by the fire risk. Owners were told to contact Whirlpool for a repair, a response supported by Peterborough Trading Standards, its regulator under the Primary Authority scheme. Despite some political and consumer group pressures, it perfectly legally resisted calls for a product recall. Owners were told they could use the dryers, but should be in attendance whilst in use, and not to use the timer button. In fact, it was only in February 2017, following intense pressure from the London Fire Brigade, that Whirlpool advised its customers to unplug and not to use the dryers.
- 42 In September 2017, an inquest found that a fire in a flat which killed two men in Conwy county in October 2014 was most likely caused by a fault in a Whirlpool tumble dryer. The coroner concluded, "*On the balance of probabilities, the fire was caused by an electrical fault in the tumble dryer in the laundry room of the flat*". The one occupant who survived said the dryer had been switched off at the time of the fire.²⁸
- 43 Alongside this emerging evidence of the hazards associated with some of its tumble dryers, Whirlpool were also more broadly associated with safety problems with its white goods in the UK. In November 2017, the London Fire Brigade responded to a Freedom of Information request revealing that white goods had triggered 2,891 fires in houses, flats and public settings such as care homes and nurseries, from January 2009 to September 2017. These had led to 10 deaths and 348 injuries. Brands under the Whirlpool umbrella accounted for 895 fires – the highest of any manufacturer.²⁹
- 44 Such data helps to explain the establishment, in 2017, of a House of Commons cross-party committee on *The Safety of Electrical Goods in the UK*, which produced its report in early 2018. Aspects of the hearing were astonishing, and the report itself damning. On

the issue of Whirlpool's dangerous tumble driers in particular, the Select Committee's Report found that there were 5.3m driers affected and that only about half had been repaired.

- 45 The report also noted that cuts to local government budgets had affected local Trading Standards' abilities to deliver consumer protection services, so that
- [b]etween 2009 and 2016 total spending on local Trading Standards fell from £213m to £123m... This has led to a reduction by 56% of full-time equivalent Trading Standards staff between 2009 and 2016.³⁰
- 46 It further questioned "*the independence of... Primary Authority partnerships... because they provide both advice to local businesses whilst also ensuring enforcement*",³¹ noting that it was
- shocked to hear that Whirlpool and Peterborough Trading Standards continued to advise consumers they could use defective appliances, even after a major fire and in the face of criticism from consumer safety organisations. The advice to consumers to attend appliances while in operation was unrealistic and – given that a fire occurred when this advice was followed – patently inadequate.³²
- 47 This latter relationship – between Whirlpool and Peterborough Trading Standards – is one of the crucial aspects of this whole episode.
- 48 The broader fallout from Grenfell therefore illustrated that it was in effect the shield of Peterborough Trading Standards, through their contractual Primary Authority agreement, which allowed Whirlpool to continue to refuse to recall products they knew were not fit for purpose and indeed posed a proven safety risk, which had led to fatalities. Regulation, ostensibly in existence to protect consumers, residents, workers and so on, is being transformed into a form of state-corporate collusion by contract which protects the private sector from law enforcement.

"We're dying in there because we don't count"

- 49 So spoke one teenage resident on the morning of 14 June 2017 as he stood outside the still burning shell of Grenfell.³³
- 50 Both the fire and the 'not counting' are partly the outcomes of the economic and political initiatives outlined in this paper. Once regulation is viewed as hindering business, and thereby economic growth, whilst at the same time a drain on already stretched state resources, then the momentum against regulation is accelerated. In some areas such as those at issue in this paper, much less visible and of lower profile than, say, financial and market regulation, the tendency to see regulation as interference becomes virtually unstoppable – and once less state regulation and enforcement is to be preferred, then how little is little enough?
- 51 As has also been indicated in this paper, the rationale for regulation has shifted under 'Better Regulation' – from one ostensibly aimed at delivering some level of social protection to one whereby regulation is vehicle for private growth and profitability, where regulators promote and protect the interests of economic actors. At local levels, this shift has been stark, with local authorities increasingly servicing private business rather than providing public service, and even with public provision being replaced wholesale by private regulation of private capital. In other words, what is at issue here is not just reducing, but changing the shape and nature of local government even if any focus on local responsibilities for social protection is often absent from even critical analyses of this process.³⁴

- 52 The trends at issue in this paper, therefore, also amount to a process of de-democratisation. It is in this context of de-democratisation that Tenants' Management Organisations (TMOs), like the Kensington and Chelsea TMO, need to be understood. Tenants' Management Organisations were allowed in UK law from mid-1994, ostensibly to allow residents in council housing or housing associations to assume responsibility for their management. In fact, in breaking the management and financing of local housing from the local authority, for some commentators a TMO came to be best understood as an arms-length organisational arrangement within local neo-liberalism which breaks formal lines of accountability and undermines democracy.³⁵ And this is also the context within which we better understand both the conditions in which residents of Grenfell Tower and the Lancaster West Estate within which it sits lived and, most crucially, their relationships with the Royal Borough of Kensington and Chelsea (RBKC) Council and the Kensington and Chelsea TMO to which the Council had transferred the management of the borough's entire council housing stock, 9,700 homes, in 1996.³⁶
- 53 Stanning has argued that KCTMO was universally hated by those it housed across the Borough, a hatred which "goes beyond the usual suspicion of residents towards those who have power over them. KCTMO has for years been an unaccountable and deeply resented part of life for many Kensington and Chelsea residents".³⁷ This relationship is best characterised as one of contempt by the KCTMO for Grenfell residents,³⁸ nowhere better captured than in the refurbishment of the Tower which was ultimately to prove fatal for at least 72 of its residents – and the disastrous decision to clad the Tower "because it was an eyesore for the rich people who live opposite".³⁹ Such relationships typify wider processes of gentrification and social cleansing in many of the UK's inner cities, but most notably in London.
- 54 Formed in 2010, the Grenfell Action Group (GAG) joined with Unite Community Membership – formed by the trade union Unite to extend membership and organisation beyond workplaces – from 2015 principally as a result of concerns about the refurbishment of the tower block⁴⁰. In this context, the Group documented "threatening and intimidatory tactics" being used by the TMO and Rydon, the lead contractor in the Tower's refurbishment, to get access to flats – access which had been denied in response to what GAG saw as sub-standard and dangerous work. The Group set out a long list of residents' "primary concerns with regards TMO/Rydon", at the top of which was the "(l)ack of meaningful consultation with residents and feeling of total disregard for tenant and leaseholders' well-being".⁴¹ Safety concerns relating to the lack of fire safety instructions, power surges, the single staircase egress in the event of a fire and the exposure of gas pipes within the flats as a result of the refurbishment were commonly expressed.
- 55 The starkest of these warnings had been published in November 2016, under the soon-to-be-proven prescience of a headline which read *KCTMO – Playing with fire!*, which included the following passage:
- It is a truly terrifying thought but the Grenfell Action Group firmly believe that only a catastrophic event will expose the ineptitude and incompetence of our landlord, the KCTMO, and bring an end to the dangerous living conditions and neglect of health and safety legislation that they inflict upon their tenants and leaseholders. .. [O]nly an incident that results in serious loss of life of KCTMO residents will allow the external scrutiny to occur that will shine a light on the practices that characterise the malign governance of this non-functioning organisation...*⁴²

- 56 Such chillingly prescient words were ignored, as virtually all of the claims, warnings, concerns of local residents were ignored by a Council who not only did not represent them but would have preferred to have them out of the borough, allowing luxury developments for the world's super-rich to expand north-westwards. This is almost de-democratisation in action – the GAG was attempting to reinject democracy into a context where it was absent, and even such stark whistle-blowing was denied legitimacy. While it was the fire which caused loss and devastation of lives, it was in many respects a class-contempt which was the cause of this outrage – a contempt that continued in the wake of the fire through the initial absence of the national and local state, and then through the lies, broken promises, and half-truths which characterised the response of state actors and bodies when they did eventually arrive on the scene.⁴³

Conclusion

- 57 Social protection is a complex project, and one which, in Britain at least, has a very long history, dating back to the 1830s.⁴⁴ For most democratic states, it is also a key source of legitimacy. As this paper has indicated, however, it can be quickly undermined, if not dismantled. The combination of an undermining of the culture of, resources for and practices which constitute public regulation and enforcement have at the same time been intimately linked with a creeping involvement of private businesses in regulating private business – a process which is at best beset by potential conflicts of interest, at worst disastrous. This combination of trajectories cannot be said to have caused Grenfell of course – the atrocity has a much deeper and wider aetiology. But if contextual, and hardly proximate, they are a crucial part of its economic and social production.
- 58 Grenfell illustrates better than anything that the processes outlined in this paper do not amount to a story about rules, regulations or red tape. Nor is it about the juxtaposition of public versus private. Rather, this is a story about social harm and social inequality – lives lost and shortened, the health of communities, workers, consumers made poorer. It is a story about processes of de-democratisation, being heard, and an “*accountability vacuum*”.⁴⁵ It is a story about the concentration of wealth and power and the insatiable desire for more of each. It is a story about contempt for those who, in the eyes of the powerful and the rich, simply ‘don’t count’. It is a story about the intentional removal of social protection – and thus a story about avoidable business-generated, state facilitated violence: what Engels called over 150 years ago, “*social murder*”⁴⁶.

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ABSTRACTS

This paper considers how the re-framing of regulation, in ways that have allowed an inter-penetration of private sector mentalities and actors with state regulators, have combined in the UK to produce both a de-democratisation and the erosion of social protection. It does so through an exploration of the enforcement of law designed to regulate business. In particular, I examine enforcement and regulatory policy at Local Authority level under the guise of the Better Regulation initiative and, then, conditions of austerity. These contexts have produced the opportunities for reframed – that is, specifically, marketised – forms of regulation which prioritise the interests of business over social protection. The paper also argues that they have been crucial in producing conditions whereby the fire at Grenfell Tower must be partly understood – conditions of de-democratisation and the decline of social protection.

Cet article examine comment la réforme de la régulation au Royaume-Uni, dans le sens d'une interpénétration entre, d'une part, les mentalités et acteurs du secteur privé, et, d'autre part, les acteurs publics de la régulation, a produit un déficit démocratique et une dégradation en matière de protection sociale. L'article se concentre sur l'application de la législation destinée à réguler les activités commerciales, et en particulier sur l'application de cette législation et les politiques de régulation à l'échelle des collectivités locales dans le double contexte du programme baptisé *Better Regulation*, puis des mesures d'austérité budgétaire. Ce double contexte a favorisé des formes de régulation réformées – plus précisément marchandisées – qui font primer les intérêts marchands sur la protection sociale. Cet article montre également que ces éléments ont contribué à produire les conditions dans lesquelles l'incendie de la Tour Grenfell a eu lieu et qu'il doit au moins partiellement être analysé à l'aune d'un déficit démocratique et du déclin de la protection sociale.

INDEX

Mots-clés: déficit démocratique, application des lois, Grenfell, collectivités locales, secteur privé, politiques publiques, régulation

Keywords: de-democratisation, enforcement, Grenfell, Primary Authority, private companies, public authorities, regulation

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